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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF: TORTURE AND DETENTION

Report of the Special Rapporteur: Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37

Addendum*

Visit by the Special Rapporteur to Turkey

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* The annex is reproduced in English only.

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* Ibid.

Introduction

1. Following a request by the Special Rapporteur, the Government of Turkey invited him, in 1997, to visit the country within the framework of his mandate. The objective of the visit, which took place from 9 to 19 November 1998, was to enable the Special Rapporteur to collect first-hand information from a wide range of contacts in order better to assess the situation of torture in Turkey.

2. During his visit the Special Rapporteur held meetings in Ankara from 9 to 12 November with the following authorities: the Minister of the Interior, Mr. Kutlu Aktas; the Minister of Justice, Mr. Hasan Denizkurdu; the Minister of Health, Mr. Halil I. Ozsoy; the Minister of State in Charge of Human Rights, Mr. Hikmet Sami Türk; the Under-Secretary of the Ministry of the Interior; the Under-Secretary of the Ministry of Foreign Affairs; the Director-General for Multilateral Political Affairs; the Acting Director-General for Security of the Ministry of the Interior; the Director-General of Prisons and Detention Houses of the Ministry of Justice; the Chief of Staff of the Jandarma; the General Director of Security of Ankara; the Higher Council of Judges and Prosecutors; the Chairperson of the Turkish Grand National Assembly Human Rights Inquiry Commission; the General Prosecutor of the Ankara State Security Court; and the General Prosecutor of Ankara.

3. From 13 to 16 November the Special Rapporteur travelled to Diyarbakir, where he met the Governor of the Emergency Region, the General Prosecutor of Diyarbakir State Security Court and the Prosecutor of Diyarbakir. On 17 and 18 November the Special Rapporteur was in Istanbul, where he met the General Prosecutor of the Istanbul State Security Court, the General Prosecutor of Istanbul, the Director of Security of Istanbul, the President of the Forensic Medical Agency and the Director of the Forensic Medical Institute of Istanbul University.

4. The Special Rapporteur also visited the places of detention at the Anti-Terror Branch of the Security Directorate in Ankara; the Command Unit of the Jandarma in Çinar, outside Diyarbakir; the Narcotics Department of the Istanbul Directorate of Security and the Beyoğlu Central Police station in Istanbul. In order to interview remand prisoners on their treatment in police custody, the Special Rapporteur visited the Central Prison of Ankara, the E-type prison of Diyarbakir and the Saĝmalcilar Prison (Bayrampaşa) of Istanbul, and also met the authorities in charge.

5. In Ankara, Istanbul and Diyarbakir the Special Rapporteur met persons who themselves or whose relatives had allegedly been torture victims.

6. He received verbal and/or written information from non-governmental organizations working at the national level, including the following: the Human Rights Foundation of Turkey (HRFT), the Human Rights Association (IHD), the Contemporary Lawyers' Association (CHD), the Turkish Medical Association (TTB) and the Turkish Forensic Association (FA).

7. He also received verbal and/or written information from non-governmental organizations working at the local level, including the following: in Ankara,

the Ankara branch of IHD; in Diyarbakir, the Diyarbakir branch of HRFT, the Association for Solidarity with Families of Prisoners (TAYD-DER), the Diyarbakir Bar Association and the Diyarbakir Medical Chamber; in Istanbul, the Istanbul branch of HRFT, the Istanbul branch of IHD, the Saturday Mothers and the Istanbul Bar Association.

I. THE PRACTICE OF TORTURE: SCOPE AND CONTEXT

A. General issues

8. There was unanimity among the authorities interviewed by the Special Rapporteur in stating that cases of torture in Turkey were not systematic and, when isolated cases occurred, these were not supported by the Government. Most of the authorities maintained that the incidence of torture had decreased, especially in the last few years, thus implicitly recognizing a higher incidence earlier. However, some of them also admitted that torture is, on the one hand, still part of the Turkish tradition and, on the other, sometimes an inevitable part of the campaign against terrorism. The Governor of the Emergency Region, Mr. Aydin Arslan, stated that in the past there were many more allegations of torture. The recent reduction of the number of allegations was mainly due to the reduction of the rate of terrorism, the new legislation and increased training of personnel.

9. In contrast, the Special Rapporteur received a great deal of information from non-governmental sources both before and during his visit alleging that torture continued to be a widespread and systematic practice. The majority of cases, however, are not reported to the authorities, mainly due to the fact that legal proceedings are rarely initiated against law enforcement officers committing torture, even more rarely result in the conviction of the perpetrators and, in the exceptional cases in which an enforcement officer is sentenced, the sentences tend to be lenient. Also, in some cases, the torture victims feel so humiliated that it is very difficult for them to admit and denounce the torture inflicted on them. The perception of what constitutes torture is also relevant: often only the most brutal physical torture is considered as such, both by the victim and the public prosecutor responsible for investigating cases of torture. A selection of approximately 40 cases submitted to the Special Rapporteur by non-governmental organizations between 12 October and 12 December 1998 is given in the annex to the present report. It will also be summarized and transmitted to the Government in accordance with the standard procedures of the mandate.

10. The Human Rights Foundation of Turkey reported that 537 people in 1997 and about 350 in the first half of 1998 had applied to their treatment and rehabilitation centres as victims of torture. These figures do not represent the totality of torture victims, but only those who were familiar with the work of the rehabilitation centres, or applied to an organization or individual familiar with the Foundation. Also, the numbers of torture allegations coming from the south and south-east of Turkey, especially from the Emergency zones, have decreased because, according to non-governmental sources, people are less eager to report cases and most of the independent lawyers and physicians have emigrated to Istanbul and Ankara. Therefore, there is little human rights monitoring taking place in this region.

11. In the course of the 1990s there have been improvements in the framing of legislation (see chaps. II and III) and in human rights education. Educational measures have included the introduction of human rights courses in school curricula and in training programmes for the security forces, as well as for prison staff and other public administrators. Also, in the past few years, the Ministers of the Interior and Justice have organized workshops on human rights throughout Turkey for governors, prefects and the security forces and, in 1998, two seminars on human rights for governors and chiefs of police and jandarma.

12. The Human Rights Coordinating High Committee was established on 9 April 1997, under the chairmanship of the Minister of State in Charge of Human Rights and consisting of under-secretaries from the Prime Minister's Office and the Ministries of Justice, the Interior, Foreign Affairs, National Education and Health, as well as representatives of other bodies necessary for the implementation of its functions. This body has undertaken important initiatives, drafting or amending legislation, to prevent the use of torture and punish those who practise torture and ill-treatment.

13. However, these developments apparently have not yet been successful in eliminating the use of torture. Many non-governmental sources maintained that these measures were merely "cosmetic".

14. The pattern of torture appears to have changed in the past few years, with the practice becoming less brutal in some places. Now, owing to shorter custody periods, some security forces carrying out interrogations avoid leaving visible signs on detainees. As can be seen from the annex, they use methods such as blindfolding, stripping the victims naked, hosing them with high-pressure cold water and then exposing them to a ventilator, squeezing the testicles, using grossly insulting language and intimidation, such as threats to their life and physical integrity or those of their families. Similarly, instead of outright rape, sexual harassment and threat of rape are used against women. With regard to common criminals, beating is sometimes used, more as a means of correction than of extracting a confession. Falaka (beating on the soles of the feet), "Palestinian hanging" (hands tied behind the back and the body suspended by the tied hands), and electric shocks are reportedly used less frequently, especially in Ankara and Diyarbakir but, nevertheless, still occur in some areas of the country. Some patterns of torture previously typical of the south-east of Turkey have recently appeared in cities like Aydin and Manisa, allegedly because police officers were transferred there from the south-east. The Turkish Parliamentary Commission for Human Rights is itself reported to have found evidence of torture in police custody in the south-east. A Reuters despatch on 3 April 1998 quoted Dr. Sema Pişkinsût, Head of the Parliamentary Commission, as declaring at a news conference that she had "seen the signs of torture ... electric and telephone cables, truncheons, pipes, water in interrogation rooms".

15. The sources indicated that most cases of torture or ill-treatment occurred in the custody period before remand or release. Torture is allegedly still widely practised on those suspected of crimes falling under the jurisdiction of the State Security Courts (in particular terrorist offences) and, among common criminals, on those charged with theft. According to some

unofficial sources, sophisticated torture is more prevalent with the police, while rough beating is more commonly used by the jandarma.

16. The phenomenon of abducting and torturing or ill-treating people without bringing them into custody has allegedly increased in the past few years, especially in Istanbul and Ankara, as a method of circumventing the new regulations on custody periods. According to lawyers, individuals are taken to a remote place to be interrogated, where they are beaten and threatened. In the majority of cases, the security forces want these individuals to become informers. For instance, it was reported to the Special Rapporteur that on 4 March 1998, following a public demonstration by the Confederation of Public Labour Unions in Ankara, Taylan Genç was abducted by three plainclothes policemen and driven to an empty field. There he was asked to become an informer and threatened with death when he refused.

17. Some specific problems exist with regard to children. The phenomenon of the torture of street children, generally charged with stealing, is increasing, especially following the recent immigration from the south-east to large cities like Istanbul and Ankara. For example, five children between the ages of six and eight were allegedly tortured on 4 June 1998 at the Security Directorate in Beyoğlu, Istanbul. Asrin Yeşiller (7 years old), Yağmur Tanrisevergil (8 years old), Sultan Tanrisevergil (6 years old), Mihriban Tomak (6 years old) and Inanç Çaki (8 years old) were reportedly beaten and sexually harassed by police officers. The certificate issued by the Forensic Medicine Institute stated that the children could not work for seven days. With respect to children in general, it is a cause for concern that special protections for minors, including the immediate provision of a lawyer, is considerably narrowed when they are accused of a crime falling under the jurisdiction of the State Security Courts.

18. Many non-governmental sources, and also some authorities, stated that torture has a social basis. Beating and similar measures are used as a means of correction and discipline within the family, at school and during military service. Therefore, collecting evidence by the use of beatings and torture is considered normal by some police officers, especially those with a low level of education. Issues relating to the role of medical personnel, public prosecutors, the judiciary and detention periods will be addressed in separate sections below.

B. Information concerning police and jandarma stations

19. The police have primary jurisdiction for security in urban areas, while the jandarma cover non-municipal areas, which represent 92 per cent of the country. The Minister of the Interior underlined that there are 200,000 policemen and 300,000 jandarma and it is possible that some of them occasionally may engage in some wrongdoing because of a lack of training or the psychology of the moment. Human rights departments have been created within the Directorate of Security and the Jandarma in order to provide in-house training on human rights and to find ways of reducing allegations of torture and ill-treatment against the security forces to a minimum.

20. Practically all officials reported that the security forces are now working "from the evidence to the suspect" rather than vice-versa. In order to collect evidence in a more professional and scientific manner, the security forces are being especially trained in using the assistance of technologically advanced criminal and forensic laboratories. Also, pilot projects with video-recording of interrogation will soon be expanded and, according to some of the authorities interviewed, they can be useful for disproving unfounded allegations against members of the security forces. Dr. Sema Pişkinsût, Head of the Parliamentary Human Rights Commission, underlined the importance of developing a new image of the "good policeman": one who collects the best body of evidence using modern technology and works as part of a team, and no longer the one who solves the largest number of cases in whatever manner. The Beyoğlu central police station has introduced a standard form on which the statement is taken and on which the suspect is asked whether he would like to have his interview videotaped. During his visit to this police station, however, the Special Rapporteur noticed that video-cameras were not permanent fixtures in the interrogation rooms.

21. The Special Rapporteur visited places of detention in Ankara, Çinar, near Diyarbakir, and Istanbul. In Ankara he visited the places of detention at the Anti-Terror Branch of the Security Directorate; in Çinar the detention centre of the Çinar Jandarma Command Unit; in Istanbul the detention centre of the Beyoğlu central police station and of the Narcotics Department of the Security Directorate. All the cells were standard, although exceptional arrangements may be made in cases of apprehension of a large number of people. For example, in Ankara, in such cases, they are all held in the gym of the Anti-Terror Branch of the Security Directorate and in Istanbul in a basement cell of the Beyoğlu central police station.

22. In the detention centres visited, no punishment cells were noted. The only exception was the Narcotics Department in Istanbul, which has an isolation room with padded dark walls, called "the dark room" by former detainees the Special Rapporteur had met, and officially used for drug addicts during periods of crisis. This cell was completely dark as it had neither a window facing outside nor artificial light. The official explanation for this was that electrical cables inside the cell could be dangerous. The only source of light was a powerful lamp, light from which entered the cell through a small window in the wall of an ante-chamber. The only window facing the exterior in this ante-chamber was completely opaque. Therefore, the ante-chamber and cell together could create an environment of total blackness, exactly as alleged by former detainees. According to an international expert consulted by the Special Rapporteur, this kind of room with its extended sensory deprivation effects (deprivation of light and sound) could have a negative impact on the people there detained. Short-term effects would include hallucinations, memory loss, depression and anxiety. There was also a danger of lasting psychiatric effects.

23. The Special Rapporteur visited the Ankara Central Prison, the E-type prison in Diyarbakir and the Sağmalcilar prison in Istanbul (Bayrampaşa) in order to interview prisoners on remand about their treatment in custody. In Ankara, the Special Rapporteur was not allowed to visit the wards on the grounds that the presence of inmates with psychological problems (depressed or drug addicts) could have been dangerous for his security. Here, a group of

young students, allegedly members of a "Revolutionary People Salvation Army Front", refused to be interviewed individually by the Special Rapporteur. One of the girls was noted to have large bruises under both eyes. It was not possible to receive an explanation from her as to how she got these bruises. The Anti-Terror Branch, which held her in custody for some days, explained that these bruises were caused by her resisting the police at the moment of her arrest. In Istanbul, some of the people on remand for ordinary crimes testified that they had been tortured or ill-treated while in custody, as did some of the political prisoners in Diyarbakir.

C. Information concerning prisons

24. The practice of torture in prisons and use of excessive force to terminate disturbances are also alleged to be widespread. Prisoners are currently held in wards, but there is talk of introducing a cell system. Political prisoners and some human rights organizations are against the cells because they fear that these will become torture chambers. With the ward system, torture is more difficult because inmates protect each other and, generally, torture or ill-treatment occurs when a prisoner is being transferred to court or to another prison. It was noted that ordinary prisoners in general prefer the cell system. It is also reported that often juvenile prisoners are kept in the same wards as older prisoners. The Special Rapporteur met Sevgi Kaya, an alleged victim of torture, who declared that when she was 15 years old she was kept in Bayrampaşa prison in Istanbul in an ordinary ward.

25. The prison personnel are often insufficiently trained. Recruitment of prison warders may be based more on physical attributes than socio-psychological ones. The training is minimal (in Istanbul, for example, one month of in-service training on how to treat prisoners and administrative responsibilities; in Diyarbakir, one week of initial training and then one week every year). Especially in the south-east, according to non-official sources, there is allegedly a tendency to choose people with an extreme right-wing or nationalist background. Early in 1998, the Head of the Parliamentary Human Rights Commission, Dr. Sema Pişkinsüt, visited prisons and custody centres in 14 provinces in order to study the situation of inmates. The report has not yet been published, but she communicated some of her findings to the Special Rapporteur. She found that terrorist prisoners are subjected to the same kind of ill-treatment as other prisoners. Her other findings included the fact that there appears to be no discrimination against prisoners based on ethnic origin; the length of legal proceedings is too long; enforcement officers who commit wrongdoings are influenced by their background and the situation in their provinces. She concluded that the latter situation could be improved by better training. On the positive side, awareness among prison personnel that ill-treatment of prisoners is unlawful is improving - a recent development.

D. Information concerning individual cases

26. The Special Rapporteur also had the opportunity to speak with a number of alleged victims of torture in Ankara, Diyarbakir and Istanbul. Some of the cases are referred to in the annex.

27. Non-governmental sources also provided the Special Rapporteur with information on the situation in parts of the country he was unable to visit. Many cases of torture were reported especially in Izmir, Manisa and Aydin. A notable case concerned Çetin Paydar who was detained on 4 March 1998 in Manisa. He confessed, allegedly under torture, that he had killed his father and was, consequently, placed on remand. Mr. Pazdar was released when his father was found alive, sitting in a park, some time later.

28. On 16 November 1998, the Special Rapporteur sent an urgent appeal to the Government from Diyarbakir, the details of which are reported in document E/CN.4/1999/61, paragraph 729. The prison transfer of Leşker Acar had been authorized by the General Directorate for Prisons and Detention Houses of the Ministry of Justice on 16 October 1998. Up to the date of the urgent appeal, however, he had not been transferred and was allegedly held in solitary confinement. In its reply, on 19 November 1998, the Government reported that Leşker Acar had been transferred to Mardin E-type closed prison at his request on 18 November 1998. It also added that the offices of the General Prosecutor of Diyarbakir and Elaziğ were investigating the case. A further reply specified that Mr. Acar had caused a riot upon arrival at Elaziğ prison and that the allegations he had made of being subject to torture or solitary confinement were unfounded.

II. THE PROTECTION OF DETAINEES AGAINST TORTURE

A. Legal issues

29. Turkey is a party to most international and regional human rights instruments under which the State has an obligation to eliminate the use of torture and to provide an effective means of redress for victims of torture and similar abuse by public officials. The most important of these instruments are the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Convention for the Prevention of Torture. It must be emphasized that article 90 of the Turkish Constitution provides that "International agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements on the ground that they are unconstitutional."

1. Domestic legal norms

30. The domestic law of Turkey has numerous provisons prohibiting and criminalizing torture and ill-treatment by State officials. Article 17 of the Constitution provides that "[n]o one shall be subjected to torture or ill-treatment incompatible with human dignity". The Penal Code also criminalizes the use of torture. Article 243 establishes that an official who "tortures an accused person or resorts to cruel, inhuman or degrading treatment in order to make him confess his offence, shall be punished by heavy imprisonment for up to five years and shall be disqualified from the civil service either temporarily or for life". Article 245 applies to ill-treatment by the police and provides that "[t]hose authorized to use force and all police officers who, while performing their duty or executing their superiors' orders, threaten or treat badly or cause bodily injury to a person or who

actually beat or wound a person in circumstances other than prescribed by laws and regulations, shall be punished by imprisonment for three months to three years and shall be temporarily disqualified from the civil service".

31. The Minister of State in Charge of Human Rights, Dr. Hikmet Sami Türk, informed the Special Rapporteur during the mission that a bill was currently before the Parliamentary Justice Commission to amend articles 243 and 245 of the Penal Code by increasing the length of sentences for those found guilty of the respective offences. The sentence under article 243 will be increased from one to five years to two to eight years, and that under article 245 from three months to three years to six months to five years. Further, under article 354 of the Penal Code, which pertains to the falsification of medical certificates, proposed amendments would allow a guilty party to be punished with a sentence of from four to eight years.

32. Article 13 of Law No. 3842, which was adopted in November 1992 amending the Code of Criminal Procedure, bans torture and other prohibited interrogation methods. Further, article 24, which was added to article 254 of the Code, prohibits the use of evidence gathered illegally: "Evidence gathered illegally by the investigation and prosecution authorities cannot constitute a basis for a verdict."

33. On 3 December 1997, the Office of the Prime Minister issued a circular on respect for human rights and the prevention of torture and ill-treatment. Inter alia, the circular provides:

> "2. Suspects will not be exposed to ill-treatment no matter what their crime; necessary investigations into allegations of torture and ill-treatment will be carried out without delay.
>
> "3. Legal proceedings will be instituted immediately against those officers shown to have been involved in torture and ill-treatment. Proceedings will be completed as soon as possible.
>
> "4. Convicts and detainees will not be exposed to abusive or humiliating treatment either in prison or during periods of transfer."

34. Another positive development was the entry into force on 1 October 1998 of the "Regulation on Apprehension, Police Custody and Interrogation". This Regulation sets out the principles and procedures that are to be applied by police officers when a person is apprehended and placed in custody or detention. Article 23 of the Regulation provides that "the person under custody, (a) cannot be submitted to physical or emotional interventions which disrupt the free will, such as mistreatment, hampering free will, torture, administering medicine by force, tiring, misleading, use of physical force or violence, use of devices; (b) cannot be promised an illegal benefit."

35. Perhaps the most important provisions of this regulation are contained in Part III pertaining to the length of custody, release and transfer to judicial authorities. Previous reports by international human rights bodies have repeatedly criticized the length of detention before the detainee is brought before a judge. For example, in its summary account of the results of the proceedings concerning the inquiry on Turkey, the Committee against

Torture considered that "the maximum time limit of 30 days for police custody, applicable to persons captured or arrested in regions under a state of emergency before they are brought before a judge, is excessive and may leave room for acts of torture by the security forces" (Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44A (A/48/44/Add.1), para. 25). This finding reflected the fact that, until 6 March 1997, article 30 of Law No. 3842 of 18 November 1992 permitted detention periods of up to 15 days for "collective" crimes and those committed under the jurisdiction of the State Security Courts and up to 30 days in state of emergency zones. A law of 6 March 1997 abolished article 30 of Law No. 3842 and amended the Code of Criminal Procedure and the Law on the Creation of the State Security Courts and their Judicial Procedures, as well as Law No. 3842 of 18 November 1992.

36. Article 13 of the new Regulation, which effectively incorporates, with some modifications, article 3 of the law of 6 March 1997 provides that "if a person apprehended for crimes committed by one or two persons is not released, he must be arraigned before the competent judge no later than 24 hours, except the necessary time needed for his arraignment before the nearest judge. If the crime falls under the scope of the State Security Courts, this period is 48 hours." Article 14 provides that this period may be extended by written order of the public prosecutor to a total of four days in the case of collective crimes, including crimes falling under the jurisdiction of the State Security Courts. Further, if the investigation is still not completed after the four days, the prosecutor may request the judge to extend the custody to seven days before the suspect is arraigned before the judge. For such crimes committed in emergency regions and falling under the scope of the State Security Courts, the seven-day period may be extended to 10 days upon request of the prosecutor and the decision of the judge.

37. Article 20 of this Regulation provides that "the apprehended person may meet with the lawyer at any time and in an environment where others will not hear the conversation". However, in crimes falling under the scope of the State Security Courts, the apprehended person may meet his lawyer only upon extension of the custody period by order of the judge.

38. Article 6 also provides important safeguards to protect an individual at the time of arrest. Specifically, "the person will be informed of his right to inform his relatives of his apprehension, the reason for apprehension, and the right to remain silent, regardless of the nature of the crime". However, there is an important limitation on the right to inform relatives of apprehension, namely, if this information would "harm the investigation as to the context and the subject". Moreover, article 9 of the Regulation states that "for crimes falling under the jurisdiction of the State Security Courts, the relatives will be informed through the same way if there is no harm to the outcome of the investigation" (emphasis added).

2. Implementation

39. The new Regulation on Apprehension, Police Custody and Interrogation, and the various provisions of the Code of Criminal Procedure, the Penal Code and the Constitution that ban and criminalize torture and ill-treatment demonstrate that significant improvements have been made to the legal

framework, especially with regard to reduction of the length of periods in police detention. However, notwithstanding the efforts of the Government, torture persists in Turkey. This is in part due to the failure of prosecutors to monitor adequately the treatment of detainees during the detention period and to investigate in a serious manner allegations of torture made by detainees. Furthermore, virtually all the lawyers who spoke to the Special Rapporteur insisted that convictions, particularly in the State Security Courts, are based almost exclusively on confessions by the defendant. A lawyer from the Human Rights Association of Turkey estimated that 90 per cent of convictions are based solely on testimonial evidence. Other lawyers stated that they had never participated in a case in the State Security Courts in which testimony was held inadmissible because it was coerced by means of torture or ill-treatment.

40. Paragraph 16 of the Guidelines on the Role of Prosecutors provides:

> "When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice."

41. The failure of prosecutors to investigate vigorously the widespread allegations of torture that they receive is a clear breach of their professional duties.

42. Although all the prosecutors of the State Security Courts and the public prosecutors with whom the Special Rapporteur met stated categorically that statements obtained by coercion are inadmissible, candid comments by one chief prosecutor of a State Security Court demonstrate the "loopholes" that do exist. For example, he told the Special Rapporteur that most charges of aiding and abetting terrorist activities are based primarily on statements by the accused, because there tends to be no corroborative evidence in such cases. However, the Special Rapporteur was informed of aiding and abetting cases in which the judges had released detainees charged with this crime who alleged that their confessions were coerced, but had not investigated further the allegations of torture. It is not clear whether the judges had ruled the statements inadmissible as illegally obtained evidence, or whether they had released the defendants from custody on other grounds.

43. The same chief prosecutor also informed the Special Rapporteur that a confession statement is still admissible, even if obtained under torture, if there exists corroborative evidence. By way of explanation, he stated that terrorists harm themselves in custody to make it appear that police tortured them. He also stated that there is an assumption on the part of the prosecutor that the police are well intentioned.

44. Alleged victims of torture from whom the Special Rapporteur received testimonies repeatedly claimed that their subsequent retractions of

confessions made during detention as a result of torture were disregarded by the prosecutors of the State Security Courts. The alleged victims also claimed that the prosecutors would not seriously investigate their allegations of torture. The case of lawyer Ahmet Fazil Tamer is particularly instructive in this regard, given the seriousness of his injuries. Mr. Tamer testified to the delegation that he was detained on 19 April 1994 in Istanbul on charges of belonging to an illegal organization. He was held for 14 days at the Gayrettepe Security Directorate, during which period he claims to have been subjected to severe torture, including "Palestinian" suspension. As a result of the suspension, he claims to have suffered temporary paralysis in both arms and could not use his hands for four months following the torture. Recent tests, four and a half years after his detention, demonstrate that his left arm is still weak and he has no feeling in his left hand. The initial medical certificate issued by the forensic doctor at the State Security Court merely stated that he could not work for four days, but the prison doctor later certified that he could not work for 15 days as a result of his injuries. Mr. Tamer claims that when he was brought before the prosecutor of the State Security Court, the prosecutor wrote on the document containing the allegations of torture that Mr. Tamer could not use his arms, and thus, he could not sign his name. Therefore, his fingerprint was used in lieu of his signature. Despite this compelling evidence, Mr. Tamer was remanded to prison based upon, inter alia, his confession. He remains in prison pending trial. To his knowledge, there has been no meaningful investigation into his allegations of torture, and certainly no police officer has been charged under articles 243 or 245 of the Penal Code.

45. Another indication that the prosecutors in the State Security Courts do not take allegations of torture seriously is the paucity of cases they refer to the public prosecutors. Virtually all the prosecutors in the State Security Courts whom the Special Rapporteur met admitted that they referred relatively few of these allegations to the public prosecutors. Indeed, they were unable to provide any statistical data on the number of cases that they had referred to the public prosecutors. A uniform response that the Special Rapporteur received as explanation for the small number of referrals was that the terrorists were instructed to allege torture in order to discredit the police and the entire justice system.

46. Despite a significant reduction in its length, the detention period for detainees falling within the jurisdiction of the State Security Courts remains problematic. Detainees charged with ordinary crimes may have access to a lawyer at any time after they are taken into custody. However, for crimes falling under the scope of the State Security Courts, the detainee may meet his or her lawyer only upon extension of the custody period by order of the judge, in other words, after four days. Further, according to lawyers involved in such cases, this meeting is in the presence of the police. Moreover, the lawyer does not have access to the case file when the decision to remand is taken. The lawyer only has access to it after the prosecutor has handed down an indictment, which normally takes one to two months.

47. The Special Rapporteur was also concerned by the fact that many government officials, particularly those at the highest levels, including senior police officers, did not know the custody periods established under the new Regulation. Virtually all of them spoke of a four-day detention period

for detainees falling within the scope of the State Security Courts, virtually conceding that the extension after two days is in practice always granted. More seriously, however, many officials simply did not know the regulations, referring to periods of detention of from 2 days to 10 days, some even referring to the previous 15 and 30 days of detention before being brought before a judge. Further, some officials insisted that even detainees falling within the scope of the State Security Courts had immediate access to a lawyer. If senior officials are not familiar with the current regulations, lower-level civil servants may obviously also be ignorant of the new standards.

48. Given that most observers report that torture normally takes place during the first two days, the up to four-day delay before a judge decides to release, remand or extend the custody period in cases involving three or more persons or falling within the scope of the State Security Court places the detainee at serious risk. Moreover, the law does not require the detainee to be brought before the judge when the extension of the custody period is decided upon. In Brogan and Others v. the United Kingdom, the European Court of Human Rights ruled that a delay of four days and six hours did not meet the European Court's requirement for promptness. 1/ It follows from this that any extension beyond four days without the suspect being brought personally before a judge is not in compliance with the European Convention on Human Rights. The fact that extensions of from 7 to 10 days may be granted in the emergency zone does not alter this situation. The European Court of Human Rights has taken the position that detentions of seven days under a state of emergency are only justifiable when other safeguards are in place, such as the remedy of habeas corpus and the right to consult with a lawyer after 48 hours. 2/ In its General Comment 8 on article 9 of the International Covenant on Civil and Political Rights, the Human Rights Committee expressed the view that the time limit for being brought "promptly" before a judge "must not exceed a few days". 3/ The Basic Principles on the Role of Lawyers provide, in principle 7, that "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than 48 hours from the time of arrest or detention."

49. Another problem is that the new Regulation provides that a prosecutor, at the request of the police, must authorize the extension of the detention beyond 48 hours. In practice the request for extension is rarely denied. It was instructive that virtually all interlocutors, both government officials and defence lawyers, referred to the four-day period. Further, several prosecutors admitted that the decision to extend the detention is based solely upon the report filed to the prosecutor requesting the extension. One chief public prosecutor of a State Security Court pointed out that the case file remains with the Anti-Terror Branch, and thus, it is difficult for him to make a decision. He also said that the police requests for extensions often come just before the expiry of the 48-hour period. Accordingly, he must trust the Anti-Terror Branch. Similarly, another chief public prosecutor of a State Security Court admitted that denials of police requests for extension were infrequent and indicated that the police carried out the investigation on behalf of the prosecutor. He stated that, therefore, there must be an element of trust between the two.

50. Another important guarantee to ensure that the rights of a detainee are respected is to maintain clear records of the apprehension and custody of the individual. In this regard, article 12 of the Regulation on Apprehension, Police Custody and Interrogation provides very clear guidelines on the information that is to be registered by the police in the admissions book. These guidelines are consistent with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, in particular principle 12. Article 6 of the Regulation on Apprehension, Police Custody and Interrogation also provides that an individual is to be immediately informed of his rights upon apprehension.

51. In practice, however, the Special Rapporteur encountered certain shortcomings and gaps in the process. On his visit to one jandarma station he discovered that there was a delay between the time a detainee was brought to the station and the time the detention was actually recorded in the book. In this particular case, the suspect had been brought to the station at 3 a.m.; this was not recorded in the admissions book until 11 a.m. The officer on duty explained that the detention was not recorded until the public prosecutor had given written permission to do so. Another shortcoming that the Special Rapporteur discovered at one police station is that the officer who logs the information into the admissions book does not sign or indicate his name; it is only the officer who records the release or transfer of the detainees who signs the admissions book. In the event that the rights of the individual have been violated, the failure to record the name of the officer admitting the detainees obviously creates problems for accountability.

52. Further, the Special Rapporteur had been informed that a protocol had been distributed to all police and jandarma stations setting out the rights of an individual who has been apprehended, which must be provided to the individual upon his apprehension. In the above-mentioned jandarma station, the officer on duty admitted that there were no copies of this protocol available to present to detainees. He stated, however, that detainees were orally informed of their rights. But when the Special Rapporteur questioned those being held at the station, they indicated that they had not been informed of their rights, but rather, had been requested to sign statements, which they had not read, to the effect that they had waived their right to a lawyer. This incident highlights the need for widespread training of all security personnel on the new Regulation on Apprehension, Police Custody and Interrogation.

B. Medical issues

53. The Special Rapporteur has deemed it necessary to devote a distinct section of his report to the role of the medical profession, not only because of its ordinary relationship with torture, both from the perspective of prevention and from that of detection and investigation, but also because of its especially pivotal role in the Turkish context. In particular, problems can be identified in Turkey in connection with the lack of forensic training and equipment of medical personnel, the issuing of medical certificates for persons in detention, and the role and questionable independence of prison doctors. However, it is first necessary to understand the relationships between actors in the forensic field and, in particular, the chain of accountability.

54. According to the Minister of State in Charge of Human Rights, forensic doctors are accountable both to their own association and to the Ministry of Health. However, this professional association, the Council of Forensic Medicine (CFM), is not independent but operates under the auspices of the Ministry of Justice. The Minister for Justice is responsible for the appointment of the president of the CFM, as well as the chairpersons of specialist boards, such as that responsible for torture-related issues. According to one non-governmental source, the close ties between forensic doctors and the justice system are exemplified by the location of the premises of forensic doctors in courthouses. Also active in the forensic field are the Forensic Medicine Institute, whose members serve part-time with the CFM as expert witnesses, often at the request of the Government, and the departments of forensic medicine in medical schools, including specialist bodies such as the Forensic Association (FA) based in Istanbul University medical school.

55. Government-appointed general practitioners, answerable to the Ministry of Health, as well as other medical personnel, have their own professional association, the Turkish Medical Association (TMA). Membership of this professional body is not compulsory for civil servants, although they may join, whereas military doctors cannot become members. This makes the effective supervision of professional misconduct for such categories of physicians potentially problematic. The TMA has the power to implement disciplinary measures, often in conjunction with independent regional medical chambers, including for the issuing of false medical reports. It is the only body which can ban physicians for up to six months, and it may initiate court proceedings to obtain a longer ban. According to the President of the TMA, and as exemplified by the case of Dr. Nur Birgen which will be discussed below, government officials are very reluctant to implement such decisions. The TMA has also been involved in the production of "alternative medical reports" in a number of cases where official reports failed to document manifest signs of torture.

56. Finally, in a group of their own, prison doctors are direct employees of the Ministry of Justice, and are therefore hierarchically inferior to the director of the prison in which they work, which, as will be seen, raises inevitable queries regarding their independence.

1. Lack of expertise and equipment

57. Concern was raised by both official and non-official interlocutors, including the Minister of Health, with regard to the lack of expertise of many doctors exercising forensic duties. This hinged both on deficiencies in the training of general practitioners and on a shortage of doctors wishing to specialize in the field of forensic medicine.

58. Estimates as to the number of forensic specialists practising in Turkey ranged from 175 to 200 for the entire country. According to the President of the FA, only 20 out of 40 medical schools in Turkey offer forensic medicine as a field of specialization. Even in those schools which do offer it, the Minister of Health reported, many choose not to study it. The resulting shortage of specialists means that, particularly in rural areas, general practitioners must often carry out the duties of forensic doctors. However, as forensic medicine does not form part of their general training, they do not

have any expertise or knowledge about diagnosis of torture, or how to carry out forensic examinations and prepare reports. The President of the FA suggested that a starting point would be to provide general practitioners with standard checklist forms, to ensure that no areas of examination are missed. The Special Rapporteur was subsequently informed by the President of the CFM that a pilot scheme, providing doctors with standard forms for guidance as to examination methods, was to be implemented in Istanbul city centre, Izmir and Ankara. It is to be hoped that such a scheme will be rapidly extended to the rural areas where, according to both official and non-official sources, the problem of lack of expertise is particularly acute. Other relevant developments of which the Special Rapporteur was informed, as being in their initial stages, include an overall increase in the number of forensic doctors and the issuance of government guidelines as to how physicians should deal with victims of torture.

59. Also worthy of note is the shortage of specialized techniques available to doctors for the diagnosis of torture. The prison doctor of Diyarbakir E-type prison indicated that when he receives allegations of torture not leaving marks susceptible to visual confirmation, such as electric shocks, the facilities to permit the detection of subcutaneous trauma are not available to him.

2. Issuing of medical certificates

60. According to several public prosecutors with whom the Special Rapporteur met during his visit, in order for an investigation into an allegation of torture to be opened, the alleged victim must be able to support his claim with either a medical certificate or an eyewitness. Clearly, the very nature of torture makes it difficult to provide eyewitness testimony and, consequently, the accuracy of medical certificates takes on decisive significance in the context of potential impunity of perpetrators. New regulations in force since 1 October 1998 (see above, para. 34) provide that all persons in police custody or making statements must be given medical examinations immediately upon arrival and prior to departure from custody, as well as during the custody period if transferred for any reason. According to the Minister of State in charge of Human Rights, a draft amendment to article 345 of the Penal Code incriminates the issuing of false medical reports that conceal torture and ill-treatment, and punishes perpetrators with from four to eight years of imprisonment. With respect to the punishment of officials who exert pressure on doctors to issue such reports, the Minister of State explained that they would be prosecuted for abuse of power. The Minister of Health also emphasized that physicians are fully independent and would not prepare false certificates. Nevertheless, the Special Rapporteur received consistent information from a range of sources both before and during his visit to the effect that the circumstances in which medical examinations take place make false reports a common occurrence, while those doctors who refuse to issue such reports are often subject to a variety of pressures as a result.

61. According to the information received, various factors influence the production of false medical certificates, but the central reason is the direct involvement of the alleged perpetrators of torture in the process of obtaining the certificates. According to one report, they have occasionally gone so far

as to bypass the involvement of medical professionals entirely. One source alleged that some policemen in Batman have their own doctor's stamp, a fact apparently confirmed by the Chairperson of the Parliamentary Human Rights Commission Inquiry. Very often, the alleged perpetrators themselves accompany the victim to the doctor of their choice, and will tend to select a doctor whom they know will not record any signs of torture. It is reportedly sometimes the case that a doctor will not actually see a patient, but merely issue a certificate to the officials without an examination. Where the doctor does see the patient, the officials are said often to remain throughout the examination, although the Minister of State in charge of Human Rights emphasized that examinations should take place in private. Alternatively, they may wait outside the door, but since both victim and doctor are clearly aware of their presence, the intimidation factor remains. It is commonly alleged that doctors carry out merely visual examinations rather than thorough physical checks. Even where a doctor performs a physical check and inquires as to the origin of injuries, it is frequent for victims to refuse to answer because of the proximity of the officials. Another obstacle to the issuing of accurate medical certificates is the fact that, even when a report describes injuries, it may not specify that these could be the product of torture, as well as the fact that a report may merely state that the victim cannot work for a certain number of days, without specifying the cause or even the injuries.

62. Where doctors issue accurate medical certificates, it is alleged that they are subject to various forms of pressure either to modify the particular certificate or to stop issuing certificates documenting torture. In the first instance, certificates are generally delivered to the accompanying officials. This means that when such officials disagree with the content of the report, they may attempt to force the doctor to change it, or they may destroy it and find another doctor willing to issue a false certificate. According to the information received, they often approach doctors at night or in their homes. For example, Dr. Eda Güven, from Incirliova, Aydin province, reported traces of torture on six persons brought to her by jandarma personnel in November 1997. The next day she was called by the officials to change her report, and when she refused, she was tried, though later acquitted, for abuse of duty. The President of the Diyarbakir Medical Chamber suggested that doctors should insist on medical examinations being conducted during working hours, at a primary health-care centre or hospital, and by a forensic doctor where available, while the TMA has issued instructions to doctors not to sign medical certificates at night.

63. Alternatively, doctors may be the subject of more pervasive forms of intimidation. The Special Rapporteur received reports of doctors being detained and ill-treated or tortured as a consequence of issuing accurate medical certificates. One case reported independently by several non-governmental organizations involved Dr. Münsif Cetin, appointed in 1994 as Chief of the Primary Health Care Centre in Diyarbakir. He, along with his colleagues, took the decision to refuse to issue certificates without examining the patient. The relevant officials allegedly responded initially with threats, and by destroying certificates, but then detained Dr. Cetin for seven days in August 1996, during which time he was reportedly subjected to various forms of ill-treatment, including hitting, punching and threats. Upon his release, the State of Emergency Regional Governor ruled that he should be

transferred outside the province. While the President of the TMA indicated that such pressure is less common now than some years ago, it is still reportedly significant, particularly in the east and south-east. Indeed, she identified fear of such pressure as the primary reason why doctors are reluctant to practise there.

64. The career prospects of doctors may also be adversely affected, either through some form of "exile", as in the case of Dr. Cetin, or by failure to consider them for key appointments. For example, Dr. Sebnen Korur was proposed to the Ministry of Justice by the TMA when the appointment to the post of President of the CFM was being made. Her appointment was refused, allegedly as a consequence of her involvement in the production of "alternative medical reports" by the TMA. On the other hand, doctors who prove willing to issue false certificates are apparently protected by the authorities, even when they are the subject of disciplinary measures by their professional organization. For example, Dr. Nur Birgen, the Chairperson of the 3rd Specialist Board of the CFM, has been banned from professional activities for six months by the TMA and is currently being prosecuted for issuing false certificates concerning seven persons detained in July 1995. In spite of this, the Ministry of Justice has not suspended her from her duties, reportedly on the grounds that she is a civil servant whose civil rights must be protected.

65. In contrast to the consistency of such allegations, which the Special Rapporteur has found to be reinforced by the personal testimonies he received throughout his visit, the current President of the CFM expressed ignorance of the kinds of pressure exerted on doctors and denied that either she or her staff had ever been subject to such pressure, or accused of issuing false reports. She did, however, concede that there was a need to address the issue of transfer of medical certificates from the doctor to the public prosecutor, and informed the Special Rapporteur that a new practice was to be introduced within the week whereby certificates would be placed in sealed envelopes and mailed by the doctor to the public prosecutor or, in the event that the doctor hands certificates to the police for delivery to the public prosecutor, the envelopes would be sealed in such a way as to prevent their being opened.

3. Role of prison doctors and other prison-related concerns

66. The presence of independent physicians in prisons may have a significant dissuasive effect with respect to torture or ill-treatment within the institutions. However, as previously mentioned, medical personnel working in prisons are employees of the Ministry of Justice and therefore hierarchically subordinate to prison directors. This gives rise to claims by non-official sources that they are subject to pressure in the fulfilment of their duties, not only in issuing medical certificates for inmates, but also in deciding whether to refer them to a hospital for urgent or specialist treatment, or in making a determination that they are terminally ill. The Director-General of Prisons expressed the opinion that the relationship is not inappropriate as doctors employed in prisons are primarily engaged in preventive medicine and diagnosis, while serious cases are usually treated in hospitals. He stressed that doctors are free to determine the necessity of transfer, and that a prison director is not hierarchically superior in this respect. He also pointed out that doctors are as likely to be subjected to pressure by inmates

to request a transfer. Nonetheless, the Special Rapporteur is concerned that the potential for abusive withholding of transfer requests is present, irrespective of actual practice, and finds it desirable that such apparent gaps in protection be closed wherever possible, not least to guard against false allegations.

67. With respect to the transfer of prisoners to hospitals, the Minister for Health informed the Special Rapporteur that plans exist to build specific hospitals in Ankara, Istanbul and Izmir exclusively for prisoners and that prisoners on transfer are currently kept in special prisoner wards in ordinary hospitals. According to the Minister, prisoners transferred to such hospital wards are free to see the doctor of their choice and are treated like any other patient. In contrast, non-official sources alleged that prisoners are often subjected to ill-treatment during transfer, that the special sections within hospitals are not able to provide the necessary facilities to treat serious cases and that medical staff in the special sections may be subject to pressure. An example was given of a case where three nurses were transferred from a special section at the request of jandarma, who felt the nurses were developing overly close relations with the prisoners.

68. A final problem of note concerning prisons is the presence of a number of prisoners with terminal diseases among inmates. Many of these, for example a group at Istanbul Sağmacilar prison (Bayrampaşa), have developed a degenerative condition known as Wernicke-Korsakoff syndrome as a result of prolonged hunger strikes. Article 399 of the Code of Criminal Procedure provides for the postponement of or reprieve from sentences for the terminally ill. The Special Rapporteur has received many allegations that this article is not being implemented in spite of a series of petitions by non-governmental organizations on behalf of terminally ill prisoners. The official response, as communicated by a non-governmental source, is reportedly that, at least in the case of those prisoners in Bayrampaşa suffering from Wernicke-Korsakoff syndrome, the problem is that they are on remand and cannot therefore be pardoned as they have not yet been convicted. While this may be an accurate legal construction of the provision, it appears inconsistent to apply a stricter rule to those whose guilt has not yet been firmly established than to those who have been convicted. As far as the Special Rapporteur's mandate is concerned, the issue is not the release of these prisoners per se, but ensuring that they receive humane treatment. If their medical condition makes release or treatment outside prison imperative, then measures should be taken accordingly.

III. IMPUNITY

69. Despite the widespread reports of torture, especially in cases involving the enforcement of the Anti-Terror Law, investigation, prosecution and punishment of members of security forces are rare. Human rights organizations claim that the failure of the Turkish Government to enforce domestic and international prohibitions of torture has led to a climate of official impunity that encourages abuse of detainees during the detention period.

70. The provisions of the Turkish Penal Code that criminalize torture and ill-treatment, specifically articles 243, 245 and 354, have been outlined above (see paras. 30-31). Other legal measures protecting against abuse by

police officers include articles 181 and 228 of the Penal Code. Article 181 provides "Where a government official, by abuse of his duty or failure to adhere to legal procedures and conditions, deprives a person of his personal liberty he shall be punished by imprisonment for not less than one year and no more than three years." Similarly, article 228 provides "A public officer who, by misuse of his authority, and in violation of laws and regulations, takes an arbitrary action regarding a person or a public officer or orders or causes others to order such an action, shall be punished by imprisonment for three months to one year; and if the offender had a special purpose for taking such action, the punishment shall be increased by not more than one third..."

71. While most government officials whom the Special Rapporteur met concede that there are cases of torture committed by State agents, they all deny that they are systematic and routine, but rather are isolated incidents in which the perpetrators are punished. In practice, there does appear to be an increase in the number of prosecutions of police. This may signal a greater commitment on the part of the Government, but also reflects greater public awareness due to increased media attention in several high-profile cases.

72. Nevertheless, the statistical information provided by both government officials and non-governmental organizations demonstrates that very few allegations lead to prosecutions, and even where there is a conviction, the punishment meted out is incommensurate with the gravity of the offence. There are several reasons, including jurisdictional hurdles, the efforts of the police leadership to protect its officers, the lack of will on the part of prosecutors to investigate and bring criminal charges against perpetrators and the failure of courts to hand down appropriate sentences.

73. In Diyarbakir, the Chief Public Prosecutor provided the following statistical information for cases investigated falling under the scope of article 243 (torture) and article 245 (ill-treatment) of the Penal Code. Under article 243, 12 allegations of torture were referred to his office during 1998, in which 5 investigations remain pending, there was 1 decision of non-jurisdiction, there were 4 decisions of non-jurisdiction because of geography, 2 decisions not to prosecute and 1 decision to proceed with prosecution. In the 20 cases under article 245, there were 9 investigations pending, 1 decision of non-jurisdiction, 3 decisions of non-jurisdiction because of geography and 7 decisions not to prosecute.

74. In Istanbul, the Chief Public Prosecutor provided the following statistical information. In 1996, 113 cases were prosecuted, in 1997, 93 cases, and in 1998 39 cases. Although many of the cases are still pending, the Public Prosecutor informed the Special Rapporteur that these prosecutions led to 15 convictions and 120 acquittals. The longest conviction was three years for a violation of article 243 of the Penal Code.

75. The Acting Director-General of Security informed the Special Rapporteur that between 1995 and 1997 there had been 152 cases falling under article 245 of the Penal Code (ill-treatment), involving a total of 411 police officers. In these 152 cases, only 4 officers had been convicted, while cases involving 140 officers remained pending. There had been 105 cases under article 243 (torture), involving 313 police officers. In those cases, 123 officers were acquitted, there were 47 decisions of non-lieu, 6 cases in which permission

was not granted for prosecution and 137 cases that remained pending. There were no cases in which an officer was sentenced to the maximum term of imprisonment, according to the statistics provided by the Acting Director-General of Security.

76. In an information note transmitted on 11 December 1998, the Government provided the following statistical information on the investigation and punishment of the law enforcement personnel during the period from 1 January 1995 to 31 October 1998. The numbers of law enforcement personnel who were the subject of judicial action under article 243 (torture) and article 245 (ill-treatment) of the Penal Code are 534 and 2,696, respectively; the numbers of law enforcement personnel who were the subject of administrative action, under article 243 and article 245, 396 and 4,508, respectively.

77. Even when prosecution leads to a conviction, the sentences handed down tend to be incommensurate with the gravity of the offence. By way of recent example, in May 1998 the Supreme Court upheld the verdict of Beyoğlu Penal Court of First Instance No. 1, which had fined a police chief, Cemalettin Turan, for torturing Yelda Ozcan, a member of the Human Rights Association (IHD), after she was detained by the police in Istanbul on 4 July 1994. The court had sentenced the police chief to three months in prison and suspended him from duty for three months on 26 December 1996. However, the prison term was commuted into a fine amounting to approximately $1.50.

78. The trial on the killing of journalist Metin Göktepe is another, notorious, example of the climate of impunity that prevails in Turkey. Göktepe was beaten to death in detention on 8 January 1996 after his apprehension while trying to cover the funeral of Riza Boybaş and Orhan Özen, prisoners who were also beaten to death during an incident in the E-type prison in Ümraniye, Istanbul, on 4 January 1996. Although the authorities first claimed that Göktepe had not been detained, it was later officially accepted that he had been killed in detention as a result of the beatings inflicted upon him.

79. The trial of the 11 police officers who were accused of killing Göktepe began several months later. As is common in such cases, the file of the trial was transferred to provinces outside Istanbul (Aydin and Afyon) for "security reasons". The accused police officers were arrested in July 1997, but only after extreme public pressure and initiatives by the Prime Minister and the President of the Republic. However, four of the police officers were released from pre-trial detention in September 1997. Six of the police officers accused of murder were eventually acquitted, while the five others were sentenced to seven years and six months in prison on 19 March 1998. The court reduced the sentences from the intended 12 years because of the good behaviour of the defendants during the proceedings. Also, the court held that "it could not be established for certain whether the defendants acted with the intention of killing deliberately". This decision, however, was subsequently overturned by the Supreme Court on the grounds of "inadequate investigation".

80. On 20 August 1998, the retrial in connection with the murder of Metin Göktepe began in the Afyon Heavy Penal Court. Immediately prior to the

finalization of the present report, the Special Rapporteur learned that the five remanded police officers had been released. The court board stated that it had taken that decision taking into consideration the period the defendants had served in prison, and the fact that most of the necessary evidence for trial had already been gathered and that it was impossible for the defendants to tamper with this evidence. The court board did ban the police officers from travelling abroad.

81. One pitfall in any effort to prosecute a State agent is found in the Law on the Prosecution of Civil Servants, which dates back to 1913, during the Ottoman period, and is intended to afford some degree of immunity for civil servants acting in their official capacities. In cases that fall within the scope of this law, an administrative board made up of civil servants, who generally have no legal training, conducts an investigation to determine whether the civil servant should be prosecuted or simply disciplined by his or her superiors. In the event that the administrative board determines that prosecution is warranted, it forwards the case to the appropriate court, along with its recommendation as to the crime of which the civil servant should be accused. The prosecutor then initiates his or her own investigation.

82. The effect of the law in this context is to frustrate and delay the prosecution of official misconduct. The jurisdiction of this administrative board is made more confusing by the fact that while members of the security forces are classified as civil servants, they are covered by the law only when acting within the scope of their ordinary law enforcement duties, that is, in their administrative capacity. For example, if members of the jandarma transferring a detainee are accused of torturing the individual, a complaint would first be referred to the administrative board because this activity falls within the scope of their ordinary law enforcement duties. However, if such officers are involved in the apprehension of a suspect on orders from the public prosecutor, they are acting in a judicial rather than an administrative capacity, and thus, any complaint would be handled directly by the prosecutor.

83. A good example of the jurisdictional hurdles created by the Law on the Prosecution of Civil Servants is seen in the case involving the killing of 10 prisoners in Diyarbakir Prison on 24 September 1996, when special team members, jandarma and prison warders put down a prison riot. During the operation, 10 prisoners were beaten to death and at least 46 were wounded, most of them by blows on the head. It was reported that there were skull fractures in all of the dead prisoners due to blows by truncheons, rifle butts and clubs, and that traces of heavy blows were observable all over their bodies. The autopsy reports concluded that the 10 prisoners had died as a result of torture. Cases are currently pending against 29 jandarma and 36 police officers for the use of excessive force and manslaughter. However, the prosecutor dismissed the counts against 30 or so prison guards based on limited questioning of the wounded prisoners, who were asked only who had injured them and not whether they had seen others harmed. Since most were unable to identify the perpetrators who had attacked them, charges could not be brought.

84. The prosecutor decided to bring cases against the 65 police and jandarma, but he also determined that they had been carrying out administrative functions rather than a judicial function, despite the fact

that the police had been sent in by the prosecutor and the crimes had been committed in a detention centre under his purview. Thus, the cases were referred to the administrative body. The administrative body, however, found that they had been performing a judicial function because the forces had been called in by the prosecutor. The prosecutor was therefore compelled to proceed with the case in the Heavy Penal Court in Diyarbakir, but the court then declined to hear the case on the grounds that it was an administrative case and therefore within the jurisdiction of the administrative board. As a result, the penal chamber of the Court of Cassation had to resolve the dispute; it determined that the case was not administrative and referred it back to the Heavy Penal Court in Diyarbakir. The first hearing in the case was held only in June 1997, nine months after the killings took place, and the case is still pending. It is important to note that none of the defendants are on remand. Further, the police who sometimes bring the eyewitnesses to the court are the very defendants themselves, which many lawyers report is a common practice to intimidate eyewitnesses.

85. The Minister of State in charge of Human Rights informed the Special Rapporteur that there is a proposal to amend the law, the primary purpose being to accelerate the process. Under article 7 of this proposed amendment, the administrative body would be required to give its decision as to whether the case should be formally investigated by the public prosecutor within 30 days from the date of the alleged crime. This 30-day period, may, if necessary, be extended once only for a period not longer than 15 days. If no decision is given by this time, authorization to investigate will be considered to have been given. While this amendment will address the problem of the current delays under the procedure, the Special Rapporteur believes that it fails to address the more problematic issue of whether a body composed of civil servants who lack legal training is the appropriate body to determine whether allegations of wrongdoing by other civil servants should be prosecuted.

86. Another jurisdictional problem is due to the fact that the investigation of torture alleged by a detainee falling within the jurisdiction of a State Security Court is conducted by the public prosecutor of the respective Heavy Penal Court. As a result, the trial of a detainee may proceed in the State Security Court system on the basis of an allegedly coerced testimony and a sentence of guilt may be handed down before a decision is taken in the Heavy Penal Court concerning the alleged torture. This in fact occurs quite frequently. For example, in the trial in the infamous Manisa case, in which students were tortured by police officers, the Izmir State Security Court relied on the students' torture-induced confessions to convict them prior to the trial of the perpetrators in the Heavy Penal Court.

87. The Turkish Code of Criminal Procedure requires a prosecutor to initiate an investigation to determine whether there are grounds for prosecution when he or she has received a complaint of torture or other information indicating that a crime may have occurred (art. 153). If the investigation supports the allegations of torture, the prosecutor is supposed to charge those responsible (art. 163). However, human rights organizations and defence lawyers contend that there is an unwillingness on the part of prosecutors to prosecute.

88. One difficulty facing prosecutors is the fact that they must rely heavily on the police to conduct the preliminary investigation of crimes. On the one hand, there is a natural reluctance on the part of prosecutors to alienate police officers, whom they view as partners. On the other hand, there is an obvious conflict of interest when the police are investigating crimes committed by colleagues. At least one prosecutor informed the Special Rapporteur that there is a need to create a judicial police force if the prosecutors are to control police abuse.

89. Prosecutors also face evidentiary problems. Since the testimony of the victim is not on its own sufficient evidence to support a conviction, the prosecution must put forward physical proof. In many cases, there is a lack of such physical evidence. In most cases this is due to the inadequacy of the medical examinations (see chap. II above). Also, not all forms of torture or ill-treatment leave physical signs. In other cases, since detainees are frequently blindfolded when tortured, they are unable to identify the perpetrators. Even if the victim is able to identify the perpetrator, defendants are not required to be present in court for the purpose of identification. To obstruct the prosecution further, defendants in some cases have been transferred to other towns, where they continue to perform their duties. Such a transfer obviously makes it difficult for prosecutors to take the testimony of the defendant.

90. The widely reported Manisa case in which 16 teenagers were arrested on charges of being members of an illegal organization and detained in December 1995 by the Anti-Terror Department of the Manisa Security Directorate demonstrates the extreme difficulties encountered in prosecuting police or security officials who have committed an act of torture. Following their detention, brief family visits enabled the detainees to inform their families of their claims that they had been tortured. The families immediately filed a complaint with the public prosecutor and the students were sent for a medical examination at the request of the families. At this examination, the students claim that police officers stood next to them and the doctors did not conduct a physical examination, nor did they ask them any questions about their physical complaints or trauma they might have suffered. The medical certificates issued included no explicit confirmation that torture had taken place.

91. The families then tried to arrange an independent medical examination and the Izmir Medical Chamber requested permission to examine the students, but was denied access to them. However, based on the official medical reports, questionnaires that it used to record the students' accounts of torture and their physical complaints, and hospital records, the Medical Chamber concluded that the students had been subjected to a range of torture techniques.

92. Despite this report, the prosecutor refused to open a case against the police. Subsequent medical examinations conducted following the students' release from detention revealed deformation in their ears from cold water spray, injuries from the squeezing of the boys' testicles, tuberculosis and that they suffered chronic pain from electrical shocks to their genitals. Once again, despite this medical evidence, the prosecutor refused to open a case. Finally, after intense media coverage and pressure from a Member of

Parliament from the region, who appealed to the President, the prosecutor opened a case against the police on 4 June 1996, six months after receiving the allegations.

93. While the trials proceeded against the students in the State Security Court and in the Heavy Penal Court, the trial of the police began in the Manisa Heavy Penal Court. In the cases before the Heavy Penal Court, the students were acquitted when the Court found that there was no conclusive evidence other than the police statements that the defendants had committed the offences. The State Security Court, however, relied upon the allegedly coerced statements and reached a conviction before the trial against the police had been concluded.

94. During the court proceedings, the police were allowed to remain on duty. Further, the court did not require the police officers to attend the hearings in the trial against them and accepted the argument that identification of the police accused should be by photographs rather than in person, on the basis that the identity of police officers involved in anti-terror work should be protected. On 11 March 1998, the police officers were acquitted owing to insufficient medical evidence of torture.

95. Both the conviction of the students and the acquittal of the police were appealed. The appeal of the conviction of the students is still pending, but in October 1998 the Court of Appeal overturned the verdict of acquittal of the police, noting that the students had been subjected to physical and psychological violence. There must now be a retrial of the police in the Court of First Instance.

96. There is also inadequate discipline of the police and jandarma. A police officer or jandarma rarely receives any form of punishment. Indeed, non-governmental organizations have provided examples of officers who, having been found guilty of torture or ill-treatment, have actually been promoted. It is also extremely rare for an officer to be placed on suspension while an investigation is being conducted, and an officer is almost never placed on remand when an indictment is brought by the public prosecutor. Once again, statistics provided to the Special Rapporteur demonstrate how rarely police officers or jandarma are disciplined.

97. For example, Lt. General Çetin Haspişiren of the Jandarma provided the Special Rapporteur with the following national statistics for the past five years on jandarma investigated internally for the crime of torture or ill-treatment: for torture, 4 non-commissioned officers and 7 expert sergeants are currently being prosecuted administratively; for ill-treatment, 8 officers, 60 non-commissioned officers and 42 expert sergeants are being prosecuted administratively.

98. The Acting Director-General of Security provided the following statistics for police officers. During the first 10 months of 1998, the contracts of 124 police officers were terminated as a result of administrative penalties, but only 20 cases involved abuse of authority (not all of these 20 cases necessarily involved acts of torture or ill-treatment); 319 officers were fined or their salaries were reduced; 179 received a suspension of promotion; and 98 received a short-term suspension of promotion.

IV. CONCLUSIONS AND RECOMMENDATIONS

99. The Special Rapporteur expresses his appreciation to the Government of Turkey for the invitation to visit the country and to the ministers, senior judges and many public officials he met for their cooperation in facilitating the mission and providing him with the extensive information, which this report reflects to the extent possible, given the restrictions on the length of documents imposed by the United Nations. Much more time and travel within the country would also have been desirable for a more complete assessment of the situation. He also appreciates the cooperation of various non-governmental organizations, including professional bodies of lawyers and doctors, as well as human rights organizations, often working under difficult conditions. Many of his interlocutors, official and non-governmental, provided him with information on the situation in parts of the country he was unable to visit.

100. Turkey, a country bordered by seven States in a politically unstable region, is not immune from the turbulent political and religious forces prevalent in the region. The western part of the country is relatively developed, but there is much room for further development, especially in the south-east. In that predominantly Kurdish area, long-standing grievances, involving neglect, discrimination and cultural and social repression, promoted substantial support for secessionist and autonomist views, spawning the establishment of the "Kurdistan Workers' Party" (PKK), which, in 1984, launched a violent and ruthless campaign of opposition to central government authority, including the reported killing in Turkey and abroad of civilians considered hostile to the organization's objectives. Such acts of terrorism have been widely and rightly condemned. Even before the dramatic arrest of the leader of the PKK in Italy during the Special Rapporteur's visit, senior government officials were indicating that they had made substantial inroads into PKK ability to carry out its armed strategy and that an end to the emergency was in sight. Turkey also faces a significant drug trafficking problem and the related phenomenon of organized crime.

101. Accordingly, the police and other security forces have to work under very difficult circumstances, often with recalcitrant detainees, creating acute challenges to professional discipline. However, none of the Special Rapporteur's interlocutors suggested that the country's crime problems could be legitimately combated by the use of torture or ill-treatment, which are crimes under Turkish, as well as international, law.

102. As to the incidence of torture and similar ill-treatment, there was a wide disparity of views among those whom the Special Rapporteur met. Numerous non-governmental sources insisted that the situation had not improved at all. For them, torture was widespread and systematic, any recent changes in the law being merely "cosmetic". In this connection, the Special Rapporteur notes that the word "systematic" in this context was used in at least three meanings: first, to indicate that the practice was approved of and tolerated, if not expected, at the highest political level; second, in the sense that it was a pervasive technique of law enforcement agencies for the purpose of investigation, securing confessions and intimidation, regardless of approval or disapproval at the higher levels of the public service or by the

Government's political leadership; 4/ and, third, to indicate that it consisted of techniques applied, in any individual case, in a deliberate manner to break the will of detainees.

103. The authorities propounded the view that the situation had much improved in the previous few years (thus implicitly acknowledging that it was graver before), especially since the introduction of shorter periods of custody without access to legal advice or without being brought before a court. For these interlocutors, the phenomenon was now confined to isolated cases that, in any event, enjoyed no official sanction.

104. In the view of the Special Rapporteur, the reality conforms to neither of the paradigms. He has no doubt, based upon extensive information reaching him over the years, that up to and including the first half of the 1990s, torture was practised systematically in all the senses mentioned above and on a widespread scale. Authoritative findings of the Committee against Torture and the Council of Europe's European Committee for the Prevention of Torture, have also buttressed this view. However, he believes that the past two years have witnessed notable improvements.

105. First, by and large, the new periods of incommunicado detention are being respected, thus restricting the amount of time available for the infliction of ill-treatment and the amount of time for visible signs of ill-treatment to heal. However, there is sufficient information indicating a more than occasional practice by some law enforcement officials of detaining and torturing or ill-treating suspects without bringing them immediately into custody.

106. Second, possibly connected with the above, there has been a substantial reduction in the brutality of the methods used in some places. Allegations of the use of falaka (beating on the soles of the feet), "Palestinian hanging" (hands tied behind the back and the body suspended by the tied hands), electric shocks and rape have abated substantially in some parts of the country, notably Ankara and Diyarbakir. On the other hand, blindfolding, the use of hosing with cold water, "straight hanging" (suspension by the raised arms from a crossbar), rough physical treatment, sexual abuses and threats of rape, the use of grossly insulting language and the making of threats to the life and physical integrity of detainees or their families still seem rife in many parts of the country. All of these torments are aggravated by the prolonged period of incommunicado detention still available in respect of anyone held on suspicion of involvement in (broadly defined) terrorist offences or in connection with ordinary offences involving, or thought to involve, more than two perpetrators; this includes but is not limited to drug-related offences. On the other hand, the worst of the practices described above still occur in some places.

107. The improvements here described are sufficiently significant to lead the Special Rapporteur to conclude that the continuing problems cannot be attributed to a formal policy of the Government. Indeed, he is disposed to consider the frequently reiterated official commitment to attaining European and international standards in law enforcement and the administration of justice as a reflection of an authentic political preference. In this connection, he welcomes the information provided by the Government after the

mission that it has agreed to the publication in January 1999 of the report of the European Committee for the Prevention of Torture. In other words, he does not view the practices as systematic in the first of the three senses described above. They may well, nevertheless, deserve that categorization in its second sense in numerous places around the country, especially if the less extreme, but still serious forms of torture or ill-treatment referred to in the previous paragraph are taken into consideration. As far as the third use of "systematic" is concerned, the Special Rapporteur considers this use too conducive to misunderstanding to apply it, since any incident involving sustained infliction of ill-treatment could fall within its scope. On the other hand, the geographic spread of the allegations, the range of potential victims, as well as the number of testimonies received before and during the mission, compel a finding that the practices referred to in the previous paragraph, in whatever specific combination, remain widespread. Where, as is the case with suspects held in connection with ordinary criminality involving not more than two persons, there is immediate access to legal advice and the 24-hour period of detention before judicial intervention applies, the extent and seriousness of allegations decreases substantially. The practice involved here could not be characterized as systematic, nor does the information available suggest that it is anything like as widespread as is the case where the longer custody periods apply. But it should be recalled that the range of crimes susceptible to the longer periods of incommunicado detention is sufficiently elastic to permit law enforcement agencies and complaisant prosecutors to avail themselves of such periods in most of the cases they would consider high priority.

108. It is clear to the Special Rapporteur that there is an unavoidable link between the periods of incommunicado detention and the existence and credibility of serious allegations of torture and ill-treatment. There has certainly been a marked decrease in such periods over the years with the longest ones (in the emergency zones) decreasing from 30 to 15 to the present 10 days. Indeed, access to a judge has now to be after four days, although there remains substantial evidence of judicial willingness to grant a three-day extension without requiring the presence of the detainee. As was admitted by several senior prosecutors, many, if not most, of them approve extensions of from 48 hours to four days without intervening to assess the well-being of the detainees or to subject police requests for such extensions to substantive scrutiny.

109. It was also put to the Special Rapporteur from among his prosecutorial interlocutors that the police find the new detention periods too short (a complaint understandably not voiced to him by his police interlocutors) - this by way of defence of the present periods, which were generally portrayed as aiming to conform to international and European standards. The Special Rapporteur appreciates that further reduction in the length of periods of police custody would, therefore, likely encounter substantial resistance from law enforcement agencies. Nevertheless, he is convinced that such reductions are necessary to bring Turkish practice up to international standards (as reflected in the case law of the Human Rights Committee with respect to the International Covenant on Civil and Political Rights, and in the Basic Principles on the Role of Lawyers) and European standards (as reflected in the case law of the European Court of Human Rights). In fact, such reductions would make false accusations of torture and ill-treatment - a phenomenon which

many police and prosecutorial authorities maintain as accounting for most allegations of torture and ill-treatment - much more difficult to sustain.

110. The few final convictions of the less than numerous law enforcement agents prosecuted for torture or ill-treatment and the relatively short sentences involved have had some impact on the climate of impunity enjoyed by law enforcement officials, but not sufficient to dispel it altogether. The fact that many of the agents who are prosecuted remain in service during the protracted proceedings can only be interpreted by them, their colleagues and the public at large as evidence of substantial institutional support. Indeed, the inability of jandarma commanders and police chiefs to point to internal disciplinary checks on misbehaviour of law enforcement officials, as opposed to external checks by Ministry of Interior officials and prosecutors, indicates a troubling gap in organizational authority.

111. The strengthening of medical checks of detainees on arrival in and departure from police custody, as well as arrival in remand prisons, have certainly had an impact on the nature and quality of allegations of torture and ill-treatment. Nevertheless, much remains to be done to ensure that the medical personnel involved are sufficiently qualified and independent, that they and the detainees brought to them are free from intimidation, that their certificates are not tampered with or destroyed and that the evidence of independent, often more qualified, doctors is given appropriate weight by prosecutors and judges.

112. As appears from the above, the mission concentrated on torture in its classical context, that is, torture inflicted in custody for the primary purpose of investigation. It did not focus on prison conditions and problems of ill-treatment by prison personnel, or on other issues potentially related to the mandate, such as the problem of virginity tests in rape cases (see concluding comment of CEDAW (A/52/38/Rev.1, para. 178)). This does not mean that no concerns on such matters had been brought to the attention of the Special Rapporteur; rather, he felt that, given the limited time available for the mission, he had to give priority to the problem that has in the past constituted and continues to constitute the area in respect of which most allegations were received.

113. In the light of the above conclusions, the Special Rapporteur has formulated a number of recommendations, many of which were urged on him by interlocutors, including some at the official level; indeed, several are already in the process of discussion and debate in governmental and legislative bodies, often inspired by the dynamic work of the Human Rights Coordinating High Committee, chaired by the Minister of State in Charge of Human Rights, Professor Dr. Sami Türk. The recommendations are:

(a) The legislation should be amended to ensure that no one is held without prompt access to a lawyer of his or her choice as required under the law applicable to ordinary crimes or, when compelling reasons dictate, access to another independent lawyer.

(b) The legislation should be amended to ensure that any extensions of police custody are ordered by a judge, before whom the detainee should be brought in person; such extensions should not exceed a total of four days from

the moment of arrest or, in a genuine emergency, seven days, provided that the safeguards referred to in the previous recommendation are in place.

(c) Pilot projects at present under way involving automatic audio- and videotaping of police and jandarma questioning should be rapidly expanded to cover all such questioning in every place of custody in the country.

(d) Medical personnel required to carry out examinations of detainees on entry into police, jandarma, court and prison establishments, or on leaving police and/or jandarma establishments, should be independent of ministries responsible for law enforcement or the administration of justice and be properly qualified in forensic medical techniques capable of identifying sequelae of physical torture or ill-treatment, as well as psychological trauma potentially attributable to mental torture or ill-treatment; international assistance should be given for the necessary training. Examinations of detainees by medical doctors selected by them should be given weight in any court proceedings (relating to the detainees or to officials accused of torture or ill-treatment) equivalent to that accorded to officially employed or selected doctors having comparable qualifications; the police bringing a detainee to a medical examination should never be those involved in the arrest or questioning of the detainees or the investigation of the incident provoking the detention. Police officers should not be present during the medical examination. Protocols should be established to assist forensic doctors in ensuring that the medical examination of detainees is comprehensive. Medical examinations should not be performed within the State Security Court facilities. Medical certificates should never be handed to the police or to the detainee while in the hands of the police, but should be made available to the detainee once out of their hands and to his or her lawyer immediately.

(e) Prosecutors and judges should not require conclusive proof of physical torture or ill-treatment (much less final conviction of an accused perpetrator) before deciding not to rely as against the detainee on confessions or information alleged to have been obtained by such treatment; indeed, the burden of proof should be on the State to demonstrate the absence of coercion. Moreover, this should also apply in respect of proceedings against alleged perpetrators of torture or ill-treatment, as long as the periods of custody do not conform to the criteria indicated in (a) and (b) above.

(f) Prosecutors and judges should diligently investigate all allegations of torture made by detainees. In the case of prosecutors in the State Security Courts, allegations should also be referred to the public prosecutor for criminal investigation. The investigation of the allegations should be conducted by the prosecutor himself or herself and the necessary staff should be provided for this purpose.

(g) Prosecutors and the judiciary should speed up the trials and appeals of public officials indicted for torture or ill-treatment. Sentences should be commensurate with the gravity of the crime. The protection against prosecution afforded by the Law on the Prosecution of Public Servants should be removed.

(h) Any public official indicted for infliction of or complicity in torture or ill-treatment should be suspended from duty.

(i) The police and jandarma should establish effective procedures for internal monitoring and disciplining of the behaviour of their agents, in particular with a view to eliminating practices of torture and ill-treatment.

(j) The practice of blindfolding detainees in police custody should be absolutely forbidden.

(k) Given the manifestly pervasive practice of torture, at least up to 1996, there should be a review by an independent body of undisputed integrity of all cases in which the primary evidence against convicted persons is a confession allegedly made under torture. All police officials, including the most senior, found to have been involved in the practice, either directly or by acquiescence, should be forthwith removed from police service and prosecuted; the same should apply to prosecutors and judges implicated in colluding in or ignoring evidence of the practice; the victims should receive substantial compensation.

(l) A system permitting an independent body, consisting of respected members of the community, representatives of legal and medical professional organizations and persons nominated by human rights organizations, to visit and report publicly on any place of deprivation of liberty should be set up as soon as possible.

(m) The Government should give serious consideration to inviting the International Committee of the Red Cross (ICRC) to establish a presence in the country capable of implementing a thorough system of visits to all places of detention meeting all the standards established by the ICRC for such visits.

(n) In view of the numerous complaints concerning detainees' lack of access to counsel, of the failure of prosecutors and judges to investigate meaningfully serious allegations of human rights violations and of the procedural anomalies that are alleged to exist in the State Security Courts, as well as questions relating to their composition, the Government should give serious consideration to extending an invitation to the Special Rapporteur on the independence of judges and lawyers.

(o) Similarly, in view of the frequent detention of individuals under the Anti-Terror Law, seemingly for exercising their right to freedom of opinion and expression and of association, the Government may also wish to give serious consideration to extending an invitation to the Working Group on Arbitrary Detention.

Notes

1/ Brogan and Others v. the United Kingdom, Judgement of the European Court of Human Rights, 29 November 1998, para. 62.

2/ See Brannigan and McBride v. United Kingdom (5/1992/350/423-424) (22 April 1993), paras. 62-66; Aksoy v. Turkey, ECHR (100/1995/606/695) (18 December 1996), paras. 82-83.

3/ In Terán Jijón v. Ecuador, No. 277/1988, the Committee found a five-day period to violate article 9.3.

4/ In this respect the Special Rapporteur notes and endorses the following definition of the Committee against Torture: "The Committee considers that torture is practised systematically when it is apparent that torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question." (A/48/44/Add.1, para. 39).

Annex

ALLEGATIONS SUBMITTED TO THE SPECIAL RAPPORTEUR BY NON-GOVERNMENTAL ORGANIZATIONS BETWEEN 12 OCTOBER AND 12 DECEMBER 1998

	Alleged victim(s)	Date of arrest	Alleged perpetrators	Charge	Description of treatment and/or injuries	Access to a lawyer	Other
1.	Cengiz Suslu	4 May 1998	Istanbul Police Public Security Section, Gayrettepe	Carrying an unlicensed weapon	11 May 1998: Anal rape with a truncheon, resulting in tearing of the intestines; electric shocks to the genitals; beatings. Underwent emergency operation at Sisli Etfal Hospital. Medical certificate stated that he could not work for 45 days.	No	Held for 20 days, but only last 4 days noted in custody log. Complaint made. Criminal proceedings initiated against 6 police officers.
2.	Mihriban Tomak (6), Asrin Yesiller (7), Sultan Tanrisevergil (6), Yagmur Tanrisevergi (8)	4 Jun. 1998	Istanbul Police Public Security Department, 3rd Section	Swindling; picking pockets	Shaving of children's hair; hosing with pressurized water while naked; falaka; beating; threats. Medical report stated that they could not work for 7 days.	Not known	Complaint made. Result of Public Prosecutor's investigation pending.
3.	Aykut Yildiz (17 years old)	4 Jun. 1998	Kagithane and Beyoglu Public Security Departments, Istanbul	Car theft	Kagithane: beating and kicking while naked. Beyoglu: beating with iron sticks, resulting in a broken arm. Medical certificate reported bruises to the face, shoulders and wrist, and broken left wrist.	Yes	Complaint made. Result unknown.
4.	Serdar Sulun (17 years old)	31 Jul. 1998	Beyoglu Investigation Unit, Istanbul	Theft of car stereo	Suspension; electric shocks to the genitals; falaka; sexual harassment; beating; threats; insults. Medical certificate reported bruises on left upper chest, left arm, right inside arm, upper left section of the back, centre back, right back and lower left knee; as well as bleeding from the genitals.	Yes	Complaint made. Result unknown.

	Alleged victim(s)	Date of arrest	Alleged perpetrators	Charge	Description of treatment and/or injuries	Access to a lawyer	Other
5.	Hakan Kizi (12 years old)	10 Aug. 1998	Mecidiyekoy Police Station, Istanbul	Unknown	Beatings. Medical certificate reported wounds to the head, bruises on the neck and right shoulder, a burn on the inside arm and deep bruises on both legs. It stated that the patient could not work for 10 days.	No	Complaint made. Result unknown.
6.	Ergun Kose	12 Sep. 1998	Kidnapped from the street by plainclothes police	Attempt to make him become an informer	Blindfolded throughout; beating; left hand and wrist cut and a burning liquid poured into the cuts; insults.		Complaint made to Kartal Public Prosecutor. Result unknown.
7.	Gural Erdogan	2 Jun. 1998	Three different Beyoglu police stations	Theft	Beating; punching; squeezing ears; punching stomach; hitting head against the wall.	Yes	Complaint made. Result unknown.
8.	Selim Ozcan	28 Apr. 1998	Eminonu Central police station, Istanbul	Carrying an unlicensed weapon	Beating; electric shocks; falaka; sexual harassment; threats.	No	Complaint made. Result unknown.
9.	Erdogan Yilmaz, Aysen Yilmaz, Arif Celebi, Zabit Ittimur, Hasan Ozan, Necati Abay, Suleyman Yeter, Erdogan Ber, Bayram Namaz, Sultan Arikan, Gonul Karagoz, Ferhat Akcay, Sedat Senoglu, Mukaddes Celik, Birsen Kaya	21 Feb. 1997 to 6 Mar. 1997	Istanbul Security Directorate, Anti-Terror Unit	Political	Palestinian hanging; straight hanging; rape; beating; subjecting to cold air; dousing with cold water while naked; hitting genitals; attempted rape with truncheons.	Not known	Complaint made. Investigation ongoing.

	Alleged victim(s)	Date of arrest	Alleged perpetrators	Charge	Description of treatment and/or injuries	Access to a lawyer	Other
10.	Murat Ekti	Death reported 24 Apr. 1998	Hatay E-Type closed prison	Serving conviction for theft	Reason for death unknown, but medical certificate reports bloody wounds on right shoulder and right back, and a broken spine. Autopsy requested.		Death reported to Adana State Prosecutor on 24 Apr. 1998 - body sent for autopsy, result unknown.
11.	Mehmet Yavuz	13 Mar. 1998	Adana police station	Theft	Dead on arrival at hospital on 14 Mar. 1998. Autopsy report records internal bleeding and stomach trauma, and large reddish bruises on both lips, shoulders, right and left armpit, right arm, left elbow, and sole of left foot.		
12.	Munsif Cetin	Aug. 1996	Rapid Deployment Forces, Diyarbakir				
13.	Sadik Kelekciler	10 Mar. 1998	State Security Forces, Diyarbakir	Political	Beatings	Not known	Complaint made. Result unknown.
14.	Abdurrahman Celik	16 May 1998	Batman Anti-terror Department	Political	Blindfolding; left standing naked and subjected to cold pressurized water; electric shocks; squeezing of testicles; suspension; beating; withholding food, water and toilet facilities; small dark cell; threats; insults.	No	Complaint made. Result unknown. Medical certificate prepared in police presence.

	Alleged victim(s)	Date of arrest	Alleged perpetrators	Charge	Description of treatment and/or injuries	Access to a lawyer	Other
15.	Fatma Tokmak, female, and her son Azat Tokmak (2½ years old)	9 Dec. 1997 to 20 Dec. 1997	Arrest by Istanbul Anti-terror police, detention at Aksaray Anti-terror Department	Political	Fatma Tokmak: left naked; suspension; squeezing breasts; threats of rape; forced to watch ill-treatment of son; forced to assume sexual position with son. Azat Tokmak: electric shocks to the back; putting out cigarettes on his body. Medical certificate reported burns on his left back consistent with such treatment, and psychological imbalance.	Not known	Complaint made. Case initially dropped, but High Court decided to expand the investigation on appeal.
16.	Ozgur Acipinar	3 Nov. 1998	Plainclothes police belonging to Ankara General Security Directorate, Anti-terror Branch	Political	Abducted in a car and taken to a remote field. Beaten over an 8-hour period. Threats.	No	Complaint made. Result unknown.
17.	Orhan Demir, Nuriye Demir, Ismail Demir	15 Oct. 1998	Gazi police station, Ankara	Unknown	Beatings. Medical certificates reported. Nuriye Demir: soft tissue bruise on front right arm. Orhan Demir: Soft tissue trauma to right wrist; no work for 3 days.	No	Complaint made. Result unknown.
18.	Deniz Celik (14 years old)	29 Jul. 1998	Batikent police station, Ankara	Theft of car stereo	Beating; left to stand naked while doused in cold water. Medical certificate reported bruising and oedema to the left eye and bruises behind the left ear and on the back.	No	Complaint made. Result unknown.
19.	37 persons present at Saturday Mothers demonstration	15 Aug. 1998	Beyoglu police station	Political	Left in locked bus for over half an hour in the sun; sprayed with pepper gas during arrest; kept 12 or 13 in windowless cells 6m², withholding of toilet facilities.	Yes	Complaint made. Result unknown.

	Alleged victim(s)	Date of arrest	Alleged perpetrators	Charge	Description of treatment and/or injuries	Access to a lawyer	Other
20.	Nese Koker, Esra Akkaya, Tomris Ozden, Seda Berzeg, all female	29 Aug. 1998 to 1 Sep. 1998	Istanbul General Security Directorate	Political	Left in locked bus for over half an hour in the sun; sprayed with pepper gas during arrest; kept 12 or 13 in windowless cells 6m^2; withholding of toilet facilities	No	Complaint made. Result unknown.
21.	Atilla Asici, Tulin Yilmaz	26 Sep. 1998	Beyoglu police station	Political	Left in locked bus for over half an hour in the sun; sprayed with pepper gas during arrest; kept 12 or 13 in windowless cells 6m^2; withholding of toilet facilities	Yes	Complaint made. Result unknown.
22.	Emine Ocak, Husniye Acar, Cafer Ocak, Mahmet Gulveren, Muteber Yildirim, Adil Firat, Ozlem Temel, Nese Ozan Toker	24 Oct. 1998	Beyoglu police station, Anti-terror unit	Political	Left in locked bus for over half an hour in the sun; sprayed with pepper gas during arrest; kept 12 or 13 in windowless cells 6m^2; withholding of toilet facilities	Yes	Complaint made. Result unknown.
23.	Sukran Esen, female	Nov. 1993 and Mar. 1994	Derik Caykoyu and Mazidagi Gonarkoy, Gendarme station personnel, Mardin		Repeated rape on each occasion; electric shocks and falaka in Nov. 1993	Yes	Complaint made on 23 Jul. 1998, but rejected on 28 Sep. 1998. Currently on appeal.
24.	Emine Yasar (16 years old), female	1 Oct. 1995 to 16 Oct. 1995	Istanbul General Security Directorate, Anti-terror Branch	Political	Hitting head against the wall; electric shocks to foot and fingers; anal rape with a truncheon on three occasions; forced to witness rape of another woman; threats. Underwent operation for torn rectum following release in 1997.	No	Found guilty and imprisoned until 1997. Complaint for torture made upon release. Result unknown.

	Alleged victim(s)	Date of arrest	Alleged perpetrators	Charge	Description of treatment and/or injuries	Access to a lawyer	Other
25.	Remziye Dinc (17 years old), female	Jan.-Feb. 1995	Village guard, Sican Village, Kozluk, Batman		Raped while threatened with firearm that she would be revealed as PKK member. Gave birth to child as a result, shown to be child of the village guard.		Complaint made. Village guard acquitted on ground that sex was consensual. High Court returned case to Court of First Instance on grounds that it was statutory rape. Case pending.
26.	Okan Kablan (now 18 years old)	7 Feb. 1996	Istanbul General Security Directorate	Political	Beatings; Palestinian hanging; subjection to pressurized cold water; blindfolding; obliged to sign confession.	Not known	Held on remand for 22 months. Released in Nov. 1997. Trial still pending. Claim filed against police. Results unknown.
27.	Deyrim Öktem, female	5 Feb. 1996	Istanbul General Security Directorate	Political	6-17 Feb. 1996: forced to strip, doused in cold water and placed in front of a fan with the window open; straight suspension; threats to make her miscarry (she was 1½ months pregnant at the time); squeezing of breasts; hitting breasts and rape with plastic stick; falaka; beating on stomach and back for 1½ hours, causing subsequent miscarriage.	No	

	Alleged victim(s)	Date of arrest	Alleged perpetrators	Charge	Description of treatment and/or injuries	Access to a lawyer	Other
28.	Sevgi Kaya (15 years old), female	8 Feb. 1996	Istanbul General Security Directorate	Political	Blindfolded; beatings, including with truncheons; subjected to loud music; threats of rape; soaked with cold water; dragged by the hair; forced to strip naked; falaka; death threats; squeezing of breasts; suspension; cold water thrown on kidney area and exposed to fan, resulting in kidney infection; beating on hands.		Complaint made. Result unknown.
29.	Gulderen Buran, female	4 Aug. 1995	Istanbul General Security Directorate	Political	Severe beating causing gynaecological bleeding; sexual assault in car while being transported to Security Directorate; kicking and punching; blindfolded; suspension, including in the form of a crucifix, with her hands tied behind her back, and with heavy stones tied to her feet; beating on kidneys; spraying with pressurized water; sexual harassment; death threats and other forms of psychological pressure. She is still suffering from extreme weakness of the right arm, and weakness of the left arm.		Sentenced to life imprisonment on basis of single testimony by policeman, but decision overturned by High Court and returned to Court of First Instance. Currently on remand in Bayrampasa.
30.	Ayfer Ercan, female	26 Jul. 1995	Istanbul General Security Directorate	Political	Beaten and sexually assaulted by police while being transferred to the Security Directorate. Dragged by the hair; suspended with hands tied behind her back and attached to a wooden bar; blindfolded throughout; mock execution; threatened with rape; stripped naked and forced to lie on ice, then sprayed with cold pressurized water and forced to stand in front of a fan; repeated beatings throughout detention; electric shocks; forced to sign a confession.		Currently in Bayrampasa prison. Needs regular medical treatment, but is subjected to threats and beatings each time she is transferred to hospital.

	Alleged victim(s)	Date of arrest	Alleged perpetrators	Charge	Description of treatment and/or injuries	Access to a lawyer	Other
31.	Ahmet Fazil Tamer	19 Apr. 1994	Gayrettepe Security Directorate, Istanbul	Political	"Palestinian hanging"; squeezing of testicles, spraying with cold pressurized water; beatings.		Police forged signature on the confession as he could not move his arms as a result of the suspension. Public Prosecutor used his fingerprint as victim could not use his arms. Still on remand in Bayrampasa prison, and proceedings ongoing to prove that the signature on the statement was not his.
32.	Emine Babacors, Nehir Bagdur, both 13 years old	8 Jan. 1998	Manisa Security Directorate	Theft	Beatings, sexual harassment with hands and truncheons; threats of rape; insults.	Not known	Complaint lodged with public prosecutor. Result unknown.
33.	Hamit Dogan	19 Jan. 1998	Izmir police officers	Attempt to force him to be an informer	Blindfolded and handcuffed and taken to unknown building; electric shocks to genitals and toes; suspension.		Official complaint made. Result unknown.
34.	Mehmet Sahin Karakaya	21 Jan. 1998	Kucukcekmece Security Directorate, Istanbul	Robbery	Stripped naked; falaka; threats. Medical certificate reported unable to work for 3 days.	Not known	Official complaint lodged against police officers.
35.	Ali Xartal, deaf and dumb	Apr. 1998	Police from Bozyaka station, Izmir	Political	Electric shocks; beatings resulting in two broken teeth; threats.	Not known	

	Alleged victim(s)	Date of arrest	Alleged perpetrators	Charge	Description of treatment and/or injuries	Access to a lawyer	Other
36.	Oktay Berke	17 Jun. 1998	Bozyaka Security Directorate, Izmir, including Can Gokalp, police chief	Attempt to force him to become an informer	Taken blindfolded to a swamp area and threatened with being thrown in; beaten with truncheons by 7 officers. Medical certificate stated could not work for 7 days.		Lodged official complaint against officers.
37.	Bülent Özpolat	9 Oct. 1996	Istanbul Anti-terror	Selling newspaper of political nature	Blindfolded; stripped naked; squeezing of genitals; slapping until his chin was broken.	No	Kept for 3 days in custody and then released after signing a paper that he was not beaten. Operated the day after his release for the broken chin. Complaint to public prosecutor, investigation still pending.
38.	Nevruz Koç	1 Jan. 1997	Saviyer police station	Insulted, started a fight and punched a policeman	Blindfolded, hit, slapped.	Yes	Operation on one leg as consequence of beating. Applied to prosecutor as he knew one of the torture perpetrators and had strong medical report. Also threatened.

	Alleged victim(s)	Date of arrest	Alleged perpetrators	Charge	Description of treatment and/or injuries	Access to a lawyer	Other
39.	Cemir Doğan	6 Nov. 1998	Police Aksaray police headquarters	Participated in manifestation against High Board of Education	Beaten, blindfolded, "Palestinian hanging" for two minutes, stripped naked, hosed with pressurized cold water. Same procedure the following day.	No	Released by State Security Court, detained again because he had not done his military service.
40.	Mehmet Ali Damir	1 Jan. 1998	Şehrenihr police station	Fight at the market	Beaten, slapped on the ear, his head knocked against the wall, rape threats.		One-day detention. No medical examination. Released by court. Complained of torture to prosecutor. Forensic report proved damage to ear.
41.	Şükriye Çinar and Zeynep Çalihan	End Oct / beginning Nov. 1998	Beyoğlu police station	Demonstration at ANAP (Motherland Party) headquarters	Stripped naked; beaten; verbal assaults; head hit against the wall; touching of genitals with stick; kicked; kept with no food for two days.	Yes	Visit to forensic doctor with door open. Claim to prosecutor who said he had medical reports. Set free by court.